HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #: HB 533

SPONSOR(S): Raulerson

COMPANION BILLS: SB 586

FINAL HOUSE FLOOR ACTION:

115 **Y's** 0 **N's**

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 533 passed the House on April 29, 2013, and subsequently passed the Senate on May 1, 2013.

A retirement plan sponsor may seek a periodic determination from the Internal Revenue Service (IRS) that its plan is a "qualified plan" under s. 401(a) of the Internal Revenue Code. A qualified plan is entitled to favorable tax treatment—contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.

In response to the City of Tampa's request, the IRS reviewed the City of Tampa's General Employees' Pension Plan (Plan) and found that in order to remain a "qualified plan," the City of Tampa needed to amend its Plan to provide for full vesting of funded benefits if the Plan is terminated or discontinued. Currently, the Plan does not make any reference to mandatory vesting in such situations—if the Plan terminates, vested participants are at risk of losing accrued pension benefits, and participants who have not yet vested are at risk of losing their contributions to the Plan.

HB 533 seeks to amend the Plan accordingly and specifies that:

1) "an Employee's Pension Credit shall become nonforfeitable if the Plan is fully terminated or has a partial termination applicable to such Employee"; and
2) "[a]n Employee with less than 6 continuous years of service will be entitled to the return of his or her contributions to the Plan upon the termination or partial termination of the Plan."

The economic impact statement form accompanying the local bill does not reflect any change in the economic impact to the Plan or City of Tampa.

The bill was approved by the Governor on June 28, 2013, ch. 2013-253, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

A retirement plan sponsor may seek a periodic determination in the form of a "favorable determination letter" (FDL) from the Internal Revenue Service (IRS) to ensure that its plan is in accordance with the Internal Revenue Code and thereby avoid the possibility of future audit. More specifically, a favorable determination letter indicates that, in the opinion of the IRS, a retirement plan is a "qualified plan" under s. 401(a) of the Internal Revenue Code. In response to the City of Tampa's request, the IRS reviewed the City of Tampa's General Employees' Pension Plan (Plan) and determined that the Plan must be amended to remain a "qualified plan" under s. 401(a) of the Internal Revenue Code.[1]

Section 401(a) details many requirements for a qualified plan, including but not limited to the following:

1) that it be impossible for any part of the corpus or income of the plan to be used for purposes other than for the exclusive benefit of plan participants;[2]
2) that the plan does not discriminate between employees;[3] and
3) minimum vesting requirements.[4]

A qualified plan under s. 401(a) of the Internal Revenue Code benefits employers and employees alike as such plans are entitled to favorable tax treatment—contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.[5] Employee retirement plans that fail to satisfy the requirements under s. 401(a) of the Internal Revenue Code are not entitled to this type of favorable tax treatment.

At issue here is the Tampa Plan's vesting requirements. After reviewing Tampa's Plan, the IRS determined that to maintain qualified status, the City of Tampa's Plan must provide for full vesting of funded benefits if the Plan is terminated or discontinued. The IRS relies on ss. 401(a)(4) and (7) of the Internal Revenue Code as it existed when the Employee Retirement Income Security Act of 1974 (ERISA) was enacted.[6]

The 1974 code denies qualified status to any "trust" that does not fully vest at termination "to the extent that [such benefits are] then funded."[7] Based upon certain language in the Tampa Plan, the IRS examiner concluded that the Plan created the intention to hold funded benefits in a trust, and applied the 1974 Code requirement that the funded benefits in such trust fully vest at the Plan's termination.[8]

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[1] The IRS issued an FDL that the Plan is qualified, contingent upon the adoption of the proposed amendment. See Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013. For more information on Favorable Determination Letters, visit: http://www.irs.gov/Retirement-Plans/EP-Determination-Letter-Resource-Guide---What-is-a-Favorable-Determination-Letter%3F

[2] Section 401(a)(2), IRC (2012).

[3] Section 401(a)(4), IRC (2012).

[4] Section 401(a)(7), IRC (2012).

[5] Publication 794 (Rev. 1-2013), Catalog Number 20630M, Department of Treasury, Internal Revenue Service, www.irs.gov

[6] Although ERISA exempts governmental plans, the IRS takes the position that the vesting requirements enumerated in the 1974 code still apply to governmental plans.

[7] *See*, correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013 (quoting language from the IRS examiner) (quoting IRS examiner). *See* also s. 411 (d)(3)(B), IRC (2012).

[8] *See*, correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013.

Currently, the Plan does not reference vesting in such situations.[9] It only states that a plan participant must work for six continuous years for his or her plan to vest (i.e., a plan participant must work for six continuous years in order to receive benefits once he or she retires). Therefore, without such amendment:

1) vested Plan participants are at risk of losing their accrued benefits if the Plan is either fully or partially terminated;
2) Plan participants who have not yet vested (i.e. have not participated for six years) are at risk of losing their contributions to the Plan if the Plan is either fully or partially terminated; and
3) the Plan will lose its qualified status and accompanying favorable tax treatment.

Effect of Changes

In response to the IRS determination, HB 533 seeks to amend Tampa's Plan to protect vested and unvested participants in the case of partial or full termination and to maintain favorable tax treatment. The City of Tampa also believes that the amendment will assist in the City's ability to attract and retain employees.[10]

The amended Plan will specifically provide the following:

1) an "Employee's Pension Credit shall become nonforfeitable if the Plan is fully terminated or had a partial termination applicable to such Employee"; and
2) "[a]n Employee with less than 6 continuous years of service will be entitled to the return of his or her contributions to the Plan upon the termination or partial termination of the Plan."

The proposed change is for administrative and compliance purposes and will not result in additional costs to the Plan or the City of Tampa.[11]

Subject to the Governor's veto powers, the bill will take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 19, 2012

WHERE? The *Tampa Tribune*, a daily newspaper published in Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes [X] No []

[9] The Plan only states that in order to vest, a plan participant has to work for six consecutive years. Ch. 2004-431, L.O.F.
[10] *See*, 2013 Economic Impact Statement, completed by Lee Huffstutler, Chief Accountant for the City of Tampa.
[11] *See*, Correspondence from John A. Lessl, ASA, EA, MAAA (General Employee Pension Board's Actuary) to Lee Huffstutler, CPA, CIA, CGFO, PMP (City of Tampa, Chief Accountant), dated December 6, 2012.